

177  
No. 778

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IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

J. G. ENGLISH AND J. C. ENGLISH,  
*Plaintiffs in Error.*

vs.

THE UNITED STATES,  
*Defendant in Error.*

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TRANSCRIPT OF RECORD.

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In Error to the Circuit Court of the United States for the  
District of Oregon.

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FILMER BROTHERS CO. PRINT, 424 SANSOME STREET, S. F.

FILED  
JAN -8 1902



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*In the Circuit Court of the United States, for the District of Oregon.*

THE UNITED STATES,

Complainant,

vs.

J. G. ENGLISH et al.,

Defendants. }

No. 2,597.  
November 1,  
1901.

**Order Extending Time to Docket Cause.**

Now, at this day, for good cause to the Court shown, it is ordered that the time heretofore allowed, in this cause, in which to file the transcript of record, on appeal, in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby extended fifteen days.

CHARLES B. BELLINGER,

Judge.

[Endorsed]: No. 778. United States Circuit Court of Appeals, for the Ninth Circuit. J. G. English et al. vs. The United States. Order Extending Time to Docket Cause. Filed November 6, 1901. F. D. Monckton, Clerk.

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**Citation.**

UNITED STATES OF AMERICA—ss.

The President of the United States, to The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for

the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error in the clerk's office of the Circuit Court of the United States, Ninth Circuit, District of Oregon in a certain action numbered 2,597, wherein J. G. English and J. C. English are plaintiffs in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said court and cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable WM. B. GILBERT, Judge of the United States Circuit Court, Ninth Circuit, District of Oregon, this fourth day of October, A. D. 1901.

WM. B. GILBERT,

Judge.

Service of within citation and receipt of a copy thereof is herby admitted this 7th day of October, 1901.

JOHN H. HALL,

Attorney for United States.

[Endorsed]: No. 2,597. Circuit Court of the United States, Ninth Circuit, District of Oregon. The United States vs. J. G. English and J. C. English. Citation. Filed October 7, 1901. J. A. Sladen, Clerk. By G. N. Marsh, Deputy Clerk.

*In the United States Circuit Court of Appeals for the Ninth  
Circuit.*

J. G. ENGLISH and J. C. ENGLISH,  
Plaintiffs in Error,

vs.

THE UNITED STATES,  
Defendant in Error.

No. 2,597.

The United States of America—ss.

**Writ of Error.**

The President of the United States of America, to the  
Judges of the Circuit Court of the United States for  
the District of Oregon, Greeting:

Because in the records and proceedings, as also in the  
rendition of the judgment of a plea which is in the Cir-  
cuit Court before the Honorable Charles B. Bellinger,  
one of you, between The United States, plaintiff and de-  
fendant in error, and J. G. English and J. C. English, de-  
fendants and plaintiffs in error, a manifest error hath  
happened to the great damage of the said plaintiff in er-  
ror, as by complaint doth appear; and we, being willing  
that error, if any hath been, should be duly corrected, and  
full and speedy justice done to the parties aforesaid, and  
in this behalf, do command you, if judgment be therein  
given, that then, under your seal, distinctly and openly,

you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness, the Honorable MELVILLE W. FULLER,  
Chief Justice of the Supreme Court of the United States,  
this October 4, 1901.

[Seal]

J. A. SLADEN,

Clerk of the Circuit Court of the United States for the  
District of Oregon.

[Endorsed]: In the United States Circuit Court of Appeals, for the Ninth Circuit. J. G. English and J. C. English, Plaintiffs in Error, vs. The United States, Defendant in Error. Writ of Error. Filed October 4, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.



*In the Circuit Court of the United States, for the District of Oregon.*

October Term, 1899.

**Caption.**

Be it remembered, that on the 18th day of November, 1899, there was duly filed in the Circuit Court of the United States for the District of Oregon, a complaint, in words and figures as follows, to wit: .

*In the Circuit Court of the United States, for the District of Oregon.*

THE UNITED STATES,	} Plaintiff,
vs.	
J. G. ENGLISH, J. C. ENGLISH,	} Defendants.
JOHN DOE JACKSON (Whose True Christian Name is Unknown), and	
JOHN J. TINKHAM,	

**Complaint.**

Comes the plaintiff by John H. Hall, United States Attorney, who prosecutes for and on behalf of the United States within the District of Oregon, and complaining of the above-named defendants, alleges that the following facts constitutes its cause of action, to wit:

That between the 5th day of September, 1898, and the 16th day of July, 1899, within the State and District of Oregon, said defendants, their servants, agents and

employees, acting unlawfully, willfully and without the consent or license of the plaintiff, entered upon the following unsurveyed nonmineral vacant public lands of the United States, said lands not being within any mineral district of the United States, and if surveyed, would be as follows, to wit:

The southeast  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of section 25, and the northeast  $\frac{1}{4}$  of section 36, in township 8 S. of R. 36 east of the Willamette meridian, and did then and there unlawfully and with intent to dispose of the same, cause and procure to be cut and removed from said lands a large quantity of timber, to wit, about 7,500 black pine trees, then and there standing, being and growing on said land and containing about 1,684 cords of wood, which said timber then and there standing was of the value of 50 cents per cord, and of the aggregate value of \$842.00.

That the said defendants caused and procured said timber so standing, being and growing upon said land to be cut and manufactured into cord wood, which aggregated 1,684 cords of wood, which was then and there, when so cut and piled upon said land, of the value of \$1.50 per cord, and of the aggregate value of \$2,526.00.

That the said defendants caused and procured said cord wood so cut and manufactured to be conveyed to the smelter of defendants at Sumpter, Oregon, which said 1,684 cords of wood when so transported to the said smelter of defendants at Sumpter, Oregon, was of the value of \$3.00 per cord, and of the aggregate value of \$5,052.00.

That said defendants then and there unlawfully, wrongfully, and knowingly diverted said cord wood so

manufactured out of said timber to their own use and benefit to the damage of plaintiff in the sum of \$5,052.00, no part of which has been paid.

Wherefore, plaintiff prays for a judgment against the defendants, and each of them, in the sum of \$5,052.00, and for the costs and disbursements of this action.

JOHN H. HALL,  
United States Attorney.

District of Oregon—ss.

I, John H. Hall, being first duly sworn depose and say, that I am the United States Attorney for the District of Oregon; that the facts set forth in the foregoing complaint are true as I verily believe.

JOHN H. HALL.

Subscribed and sworn to before me this 16th day of November, 1899.

[Notarial Seal

VICCA COMBS,  
Notary Public for Oregon.

Filed November 18, 1899. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.<sup>1</sup>

And afterwards to wit, on the 18th day of November, 1899, there was issued out of said court a summons, in words and figures as follows, to wit:

*In the Circuit Court of the United States, for the Ninth  
Judicial Circuit, District of Oregon.*

THE UNITED STATES,

Plaintiff,

vs.

J. G. ENGLISH, J. C. ENGLISH,  
JOHN DOE JACKSON (Whose True  
Christian Name is Unknown), and  
JOHN J. TINKHAM,

Defendants.

No. 2,597.

**Summons.**

The President of the United States, to J. G. English, J. C. English, John Doe Jackson (Whose True Christian Name is Unknown) and John J. Tinkham, the Above-named Defendants, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Portland, in said District, and answer the complaint filed against you in the above-entitled action within ten days from the date of the service of this summons upon you, if served within the county of Multnomah, in said District, or if served with- in any other county of said District then within thirty days from the date of such service upon you; and if you fail so to appear and answer, for want thereof, the plain-

tiff will take judgment against you and each of you, in the sum of \$5052.00 and for the costs and disbursements of this action.

And this is to command you, the marshal of said district, or your deputy, to make due service and return of this summons. Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, affixed at Portland, in said District this 18th day of November, 1899.

[Seal of U. S. Circuit Court,  
District of Oregon.]

J. A. SLADEN,

Clerk.

United States of America, }  
District of Oregon. } ss.

I hereby certify that on the 22d day of November, 1899, in Baker County, in said District, I duly served the within summons upon the therein named J. C. English and W. H. Jackson, by delivering to each of them personally a true copy of said summons, duly certified to by me as United States marshal together with a copy of the bill of complaint in the within entitled suit, duly certified to by John H. Hall, United States Attorney for said District.

Marshal's fees, \$56.56.

ZOETH HOUSER,

United States Marshal for District of Oregon.

United States of America, }  
District of Oregon. } ss.

I hereby certify that I have made due search and inquiry, and am unable to find the herein named J. G. Eng-

lish, and John J. Tinkham within the District of Oregon.

Dated Portland, Oregon, Nov. 23d, 1899.

ZOETH HOUSER,

United States Marshal for District of Oregon.

Returned and filed December 26, 1899. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards, to wit, on the 18th day of December, 1899, there was duly filed in said court, a demurrer to complaint, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,

Plaintiff,

vs.

J. G. ENGLISH, J. C. ENGLISH,  
JOHN DOE JACKSON (Whose True  
Christian Name is Unknown), and  
JOHN J. TINKHAM,

Defendants.

### Demurrer to Complaint.

Now comes J. G. English, J. T. English (sued herein as J. C. English), John Doe Jackson (whose true Christian name is unknown), and John T. Tinkham, defendants herein, by John L. Rand, their attorney, and demur to the com-

plaint herein for the reason that the same does not state facts sufficient to constitute a cause of action.

JOHN L. RAND,  
Attorney for Defendants.

Filed December 18, 1899. J. A. Sladen, Clerk United States Circuit Court, District of Oregon.

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And afterwards, to wit, on the 15th day of May, 1900, there was duly filed in said court an answer, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,

Plaintiff,

vs.

J. G. ENGLISH, J. T. ENGLISH  
(Sued Under the Name of J. C. English), W. H. JACKSON (Sued Under the Name of John Doe Jackson),  
and JOHN T. TINKHAM,  
Defendants.

**Answer.**

Come now the defendants in the above-entitled action, and for answer and defense to the complaint herein, admit, deny and allege as follows:

Deny that between the 5th day of September, 1898, and the 16th day of July, 1899, or at any other date, or at

all, the defendants or either or any or them, or any servants, agents or employees of the defendants, or either or any of them, ever unlawfully or willfully, or without the consent and license of the plaintiff, entered upon the following or any unsurveyed or nonmineral or vacant public lands of the United States, or any land not being within a mineral district of the United States, or any lands which, if surveyed would be as follows: The southeast  $\frac{1}{4}$  of the southeast  $\frac{1}{4}$  of section 25, or the northeast  $\frac{1}{4}$  of section 36 in tp. 8 S., R. 36 E. W. M., or any part thereof, or upon any unsurveyed or nonmineral or vacant public lands of the United States;

Deny that the southeast  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of section 24, and the northeast  $\frac{1}{4}$  of section 36, in tp. 8 S. of R. 36 E. W. M., in Baker County, Oregon, when surveyed, is not or at any time has not been within any mineral district of the United States;

Deny that said above-described land is nonmineral, or ever was nonmineral; or that said land or any part thereof, at any of the times mentioned in the complaint was or is vacant lands of the United States, or was or is not now within a mineral district of the United States.

Admit that the said land was unsurveyed and was unpatented, and that the paramount title to the same was and still is in the United States; but

Denies that the same was vacant or nonmineral;

Denies that the defendants, or either or any of them, their servants, agents and employees, or either or any thereof, did then or there, or at any time, or at all, unlawfully or with intent to dispose of the same, or any



part thereof, cause or procure to be cut or removed from said or any lands a large or any quantity of timber, either about seventy-five hundred, or any number of black pine trees, or any trees then or there standing or being or growing on said land, or any part thereof or on any land, or containing 1684 cords of wood, or any amount of wood;

Deny that the said 7,500 black pine trees, or the said timber, or any part thereof, was then or there or ever was when standing, of the value of fifty cents per cord, or of any value per cord greater than ten cents per cord, or was of the aggregate value of \$842.00, or of any value greater than \$168.40;

Denies that the said defendants, or either or any thereof caused or procured the said or any timber so standing or otherwise, or being or growing upon the said land, or otherwise, to be cut or manufactured into cord wood aggregating 1684 cords of wood, or any amount of wood except as hereinafter alleged;

Denies that the said wood when cut and piled upon the said land was of the value of \$1.50 per cord, or of any amount per cord greater than 90 cents per cord, or was of the aggregate value of \$2,526.00, or of any sum greater than about \$1,500.00;

Denies that the said defendants, or either or any thereof, caused or procured the said cord wood, or any part thereof so cut or manufactured, or otherwise, to be conveyed to any smelter of the defendant at Sumpter, Oregon, or to be conveyed at all except as hereinafter alleged;

Denies that the said 1684 cords of wood, or any part thereof, when transported as hereinafter alleged, or other-

wise, was of the value of the sum of \$3.00 per cord, or of any sum greater than \$2.00 per cord; or was of the aggregate value of \$5,052.00, or of any sum greater than \$3,368.00;

Deny that the said defendants, or either or any thereof, then or there, or at any other time or at all, ever unlawfully or wrongfully or knowingly diverted or converted the said cord wood, or any cord wood so manufactured out of said or any timbers, to their own use or benefit, to the damage of the plaintiff in the sum of \$5,052.00, or in any sum or in any amount whatsoever;

And for other and further answer and defense herein, defendants allege:

That the defendants, J. G. English and J. T. English, at all the dates and times hereinafter mentioned were native-born citizens of the United States, bona fide residents of the State of Oregon, and were the owners of, in possession and engaged in working and mining the Golconda and certain other quartz mining claims, and the Columbia and McKinley placer mining claims, all situate in Baker County, Oregon, and also a certain quartz-mill known as the Golconda quartz-mill, situate at the Golconda mine used for the reduction of the ore mined in and upon and from the said quartz claims;

That the said Columbia placer mine and the said McKinley placer mine are each situate upon what will be when surveyed, the S. E.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$  of section 25, the N. E.  $\frac{1}{4}$  of section 36, in tp. 8 S., R. 36 E. W. M., and including all the above-described legal subdivisions upon which the timber and wood mentioned in the complaint as

cut and removed by the defendants, was cut and removed in the manner as hereinafter stated; and that none of said timber was cut or removed from any other portion of said lands except that part covered by the said McKinley and the said Columbia placer mining claims;

That on or about the 5th day of September, 1898, the said defendants in this further answer above-named entered their said placer ground, and upon and from said placer mining claims cut and removed the trees and cord wood mentioned in the complaint, amounting to about fifteen hundred cords of wood, and thereafter actually used all of the said cord wood and trees in the necessary and actual mining by the defendants upon their said mining claims above mentioned;

That the said wood and trees was each and all cut for mining purposes only, and was all necessary for the mining purposes of these defendants upon their said mining claims, and none of the said wood or trees was ever cut or removed for the purpose of sale, transportation out of the State, manufacturing, smelting, or for any other purpose except for the purpose of mining by defendants of their said mining claims, and all of which was actually necessary to be used by defendants and was actually used by defendants for mining purposes;

That all of the said quartz mining claims, placer claims and the said quartz-mill are situate adjacent to each other, and all of the timber and trees cut by defendants was required at the time the same was cut and removed, for development and improvement of said mining claims, and was taken and used for said purpose, and not otherwise;

That the said land upon which the said timber was cut and removed is of a mineral character exclusively, and was not subject to entry or sale under any existing law of the United States except the mining laws thereof, and at the time the said timber and trees were so cut and removed as aforesaid, all of the land upon which said trees were standing and from which the same was cut and removed was in the possession of these defendants and was covered by existing valid placer mining locations belonging to the defendants;

That the said timber and cord wood so cut by the defendants and so removed was of the value while standing of not to exceed ten cents per cord, and not to exceed the aggregate value of \$150.00; and the same was cut and removed by the defendants in good faith for mining purposes under an honest belief that the defendants had the right to, and were authorized by law to cut, remove and use the same in the manner and for the purposes and as cut and removed by the defendants;

That the cutting and removing of the said timber as above mentioned constituted the acts complained of in the complaint; and none of the said wood or timber was cut from any vacant public lands of the United States, or from any lands not owned and possessed by these defendants, except that the paramount title to the said land was at said time, and still is in the United States, and plaintiff's rights thereto and therein existed under and by virtue of their location and holding thereof under the mining laws of the United States;

That the other defendants above named, W. H. Jackson and John T. Tinkham, were at all times, in so far as the

said timber and trees were cut and removed, the employees, agents and servants of the defendants, J. G. English and J. T. English, and acted in no other capacity.

And for other and further answer and defense herein, defendants allege:

That the defendants J. T. English and J. G. English were at all the dates and times herein mentioned citizens of the United States, bona fide residents of Baker County, Oregon, and were the owners of the Golconda and other quartz mining claims, the Columbia and McKinley placer mining claims, and the Golconda quartz-mill, and resided at and upon the said mines;

That the said Columbia and McKinley placer mining claims were situate upon what when surveyed will be the S. E.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$  of sec. 25, and the N. E.  $\frac{1}{4}$  of sec. 36, in tp. 8 S., R. 36 E. W. M., and all of the ground above described by legal subdivisions, and all of said mining claims, were included in and comprised a part of the mineral district situate in Baker County, Oregon, and all of the land covered by said claims was mineral in character, and not subject to entry or sale under the existing law, except under the mining laws of the United States;

That said defendants were miners, and were actually engaged in mining the said quartz and placer mining claims, and in running the said quartz-mill, and that in such mining all of the timber and wood cut and removed by the defendants as hereinafter stated was actually necessary for the use of the defendants, and was actually used by the defendants for mining purposes only, and in the necessary mining of defendants said quartz and placer mining claims;

That said placer and quartz claims all lie adjacent to each other in Baker County, Oregon;

That on or about the 5th day of September, 1898, the defendants in the separate answer above named, under and by virtue of the act of Congress passed June 3d, 1878, and the rules and regulations of the Land Department and of the Secretary of the Interior of the United States, prescribed under and by virtue of said act, entered upon the said McKinley and Columbia placer mining claims and cut and removed therefrom about 1500 cords of wood, being the wood mentioned in the complaint herein, and used the same for the necessary mining of their said claims, and in the necessary mining operations of defendants upon their said mining claims;

That none of the said wood or timber was cut or removed by the defendants for the purpose of being used, nor was any of the same used, for any purpose except that of developing, improving and mining the said quartz and placer mining claims of the defendants above mentioned, and none of said wood so cut and removed was cut or removed or used for the purpose of sale, manufacturing, smelting or transportation out of the State, but all of the same was cut for mining purposes and was actually used for such purposes only;

That all of said wood was cut and removed from the said placer mining claims above mentioned of the defendants, and all of the said mining claims and the land from which the said timber was so cut and removed by the defendants, was of a mineral character exclusively, and was not subject to entry or sale under any existing law of the United States except the mining laws thereof;

That said timber and cord wood while standing was of the value of not to exceed ten cents per cord, and of not to exceed in the aggregate the sum of \$1500.00, and the same was cut by the defendants as aforesaid in good faith under an honest belief that they had authority and right under and by virtue of the laws of the United States and the rulings and regulations of the Land Department and the Secretary of the Interior thereof, to cut, remove and use the said timber and wood and the whole thereof.

Wherefore defendants pray that they go hence without day, and have and recover of and from the plaintiff their costs and disbursements herein.

JOHN L. RAND,  
Attorney for Defendants.

State of Oregon, }  
County of Baker. } ss.

I, John T. English being first duly sworn, depose and say, that I am one of the defendants in the above-entitled action, and the foregoing answer is true as I verily believe.

JOHN T. ENGLISH.

Subscribed and sworn to before me this 2d day of May, 1900.

[Notarial Seal]

JOHN L. RAND,  
Notary Public for the State of Oregon.

Filed May 15, 1900. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 19th day of June, 1900, there was duly filed in said court, a demurrer to answer, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,

Plaintiff,

vs.

J. G. ENGLISH, J. C. ENGLISH,  
JOHN DOE JACKSON, (Whose True  
Christian Name is Unknown) and  
JOHN T. TINKHAM,

Defendants.

**Demurrer to Answer.**

Comes now the plaintiff by John H. Hall, who prosecutes for and on behalf of the United States within the District of Oregon, and demurs to all that portion of defendants' answer filed herein beginning at the top of page 4, and ending with the word "capacity" on line 11 of page 6, for the reason that the same does not state facts sufficient to constitute a defense to plaintiff's complaint filed herein.

Also demurs to all that portion of defendants said answer beginning with the word "that" on line 14 page 6 thereof, and ending with the word "thereof" on line 14 of page 8 thereof, for the reason that the same does not state facts sufficient to constitute a defense to plaintiff's complaint filed herein.

JOHN H. HALL,  
United States Attorney.



District of Oregon—ss.

I, John H. Hall, United States Attorney for the District of Oregon, hereby certify that I have prepared the foregoing demurrer to defendants' answer, and that the same in my judgment is well founded in law, and is not interposed for the purpose of delay.

JOHN H. HALL,  
United States Attorney.

Filed June 19, 1900. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards, to wit, on Tuesday, the 17th day of July, 1900, the same being the 84th judicial day of the regular April term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States, for the District of Oregon.*

THE UNITED STATES, }  
vs. } No. 2,597.  
J. G. ENGLISH, et al. } July 17, 1900.

**Order Setting Demurrer to Complaint for Hearing.**

Now, at this day, on motion of Mr. John H. Hall, United States Attorney, it is ordered that the hearing of this cause upon the demurrer to the complaint herein, be, and the same hereby is, set for Wednesday, July 25, 1900.

And afterwards, to wit, on Monday, the 23d day of July, 1900, the same being the 89th judicial day of the regular April term of said Court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the District of  
Oregon.*

THE UNITED STATES,	}	No. 2,597.
vs.		
J. G. ENGLISH, et al.		

**Order Continuing Hearing on Demurrer.**

Now, at this day, comes the plaintiff herein by Mr. John H. Hall, United States Attorney, and the defendants by Mr. L. R. Webster, of counsel, and, thereupon, on motion of said plaintiff, it is ordered that the hearing of this cause upon the demurrer to the complaint herein, heretofore set for Wednesday, July 25, 1900, be, and the same is hereby, continued to Thursday, July 26, 1900.

And afterwards, to wit, on Wednesday, the 1st day of August, 1900, the same being the 97th judicial day of the regular April term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,	} No. 2,597. August 1, 1900.
vs.	
J. G. ENGLISH, et al.	

**Order Continuing Hearing on Demurrer.**

Now, at this day, comes the United States by Mr. John H. Hall, United States Attorney, and the defendants by Mr. L. R. Webster, of counsel, and, thereupon, it is ordered, that the hearing of this cause, upon the demurrer to the complaint herein, be and the same is hereby, continued until the further order of the Court.

And afterwards, to wit, on Tuesday, the 27th day of November, 1900, the same being the 50th judicial day of the regular October term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge, presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,	} No. 2,597.	
vs.		} November 27,
J. G. ENGLISH, et al.		

**Order Permitting Withdrawal of Demurrer to Answer, etc.**

Now, at this day, on motion of Mr. John H. Hall, United States Attorney, it is ordered that the above-named plaintiff be, and it is hereby, allowed to withdraw its demurrer to the answer, heretofore filed herein, and to file herein its reply.

And, it is further ordered, that the trial of this cause be and it is hereby, set for 10 o'clock A. M. of Thursday, December 13, 1900.

And afterwards, to wit, on the 27th day of November, 1900, there was duly filed in said court a reply, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

UNITED STATES,

Plaintiff,

vs.

J. G. ENGLISH, J. T. ENGLISH, W.

H. JACKSON (Sued Under the Name  
of John Doe Jackson), and JOHN

T. TINKHAM,

Defendants.

**Reply.**

Comes now the plaintiff above named by John H. Hall, United States Attorney, who prosecutes for and on behalf of the United States, within the District of Oregon, and replying to defendants' answer filed herein,

Denies that at all or any of the dates or times mentioned in said answer, defendants J. G. English and J. T. English, or either of them, were owners of or in possession or engaged in working or mining the Golconda or certain or any other quartz mining claims, or the Columbia or McKinley placer mining claims situate in Baker County, Oregon.

And denies that none of the timber alleged to have been cut by defendants in plaintiff's complaint was cut or removed from any other portion of the land described in defendants' answer except that part covered by the alleged McKinley and the alleged Columbia placer mining claims; and denies that the cord wood cut and removed by defendants as set forth in plaintiff's complaint was thereafter used in the necessary or actual mining by defendants upon their said alleged mining claims; and denies that said wood and trees was each or all cut for mining purposes only, or was necessary for mining purposes of defendants upon their said alleged mining claims, or that none of the said wood or trees as alleged in plaintiff's complaint was cut or removed for the purpose of sale, manufacturing, smelting and other purposes, or for mining purposes by defendants on their said alleged mining claims, or that said wood was necessary to be used by defendants, or was used by defendants for mining purposes.

And denies that all or any of the timber and trees cut by defendants was required at the time the same was cut and removed or at any other time for development or improvement of said alleged mining claims, or was taken or used for said purpose, or was not otherwise used.

Denies that said land upon which the said timber was cut and removed was or is of a mineral character exclusively and was not subject to entry or sale under any existing law of the United States except the mining laws thereof, or that at the time said timber and trees were so cut and removed off of any of the land upon

which said trees were standing and from which same was cut and removed was in the possession of the defendants or any of them, or was covered by existing valid placer mining location belonging to the defendants or either of them.

Denies that the said timber and cord wood so cut and removed by defendants was of the value while standing of not exceeding ten cents per cord, or not to exceed the aggregate value of \$1,500.00 or was of any less value of \$1.50 per cord or was of less than the aggregate value of \$2,526.00

And denies that said wood and timber was cut or removed by defendants in good faith or for mining purposes or under an honest or any belief that defendants had a right to or was authorized by law to cut or remove or use the same in the manner or in any manner or for the defendants or for any purpose as cut and removed by defendants.

Denies that none of the said wood or timber was cut from vacant public lands of the United States, or from lands not owned and possessed by plaintiff, or that defendants or either of them had any right thereto or therein existing under or by virtue of any location or holding thereof under the mining laws of the United States.

Denies upon information and belief that the defendants J. T. or J. G. English, or either of them, were the owners of the Golconda or other quartz mining claims, or the Columbia or McKinley placer mining claims.

Denies that said Columbia or McKinley placer mining claims were included in or comprise a part of the min-

eral districts situate in Baker County, Oregon, or any mineral district, or that all or any of the land covered by said claims was mineral in character and not subject to entry or sale under the existing laws of the United States.

And denies that said defendants or either of them were actually or at all engaged in mining of said or any quartz or placer mining claims or any such alleged mining claims, or all or any of the timber and wood cut and removed by the defendants was necessary for the use of defendants for mining purposes only or at all or in the necessary mining of defendants said alleged quartz or placer mining claims; and denies that the 1,500 cords of wood alleged by defendants to have been cut from the alleged McKinley and placer mining claim and removed therefrom was used for the necessary mining or any mining of said claims or in the necessary mining operations of defendants upon any of their said alleged mining claims.

Denies that none of said wood or timber was cut or removed by defendants for the purpose of being used, or that none of said timber was used for any purposes except that of developing or improving or mining the said alleged quartz and placer claims of defendants, or that none of said wood was cut and removed, was cut, removed or was for the purpose of manufacturing or smelting, or that the same was cut for mining purposes, or was used for such purpose only.

Denies that all or any of said wood was cut or removed from any placer claim owned by defendants or any mining claims owned by defendants, or either of



them, or that the land on which the said timber was cut and removed by defendants was of a mineral character exclusively or at all, or was not subject to entry or sale under any existing law of the United States except the mining laws thereof.

Denies that said timber and cord wood while standing was of no greater value than ten cents a cord, or did not exceed in the aggregate the sum of \$1,500.00, or that the same was cut by defendants in good faith or under an honest belief that defendants or either of them had any authority or right under or by virtue of the laws of the United States or any ruling or regulations of the Land Department or the Secretary of the Interior thereof to cut or remove or use the said timber and wood or any part thereof.

Wherefore plaintiff demands judgment as prayed for in its complaint.

JOHN H. HALL,

United States Attorney for the District of Oregon.

District of Oregon—ss.

I, John H. Hall, being first duly sworn depose and say that I have read the foregoing answer and the same is true as I verily believe.

JOHN H. HALL.

Subscribed and sworn to before me this 23d day of November, 1900.

[Notarial Seal]

VICCA COMBS,  
Notary Public for Oregon.

State of Oregon,  
 County of Multnomah. } ss.

Due and legal service of the within reply is hereby accepted at Portland, Oregon, this 24th day of November, 1900, by receiving a copy thereof duly certified to by John H. Hall, attorney for plaintiff.

LIONEL R. WEBSTER,  
 Of Attorneys for Defendants.

Filed November 27, 1900. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on Thursday, the 13th day of December, 1900, the same being the 63d judicial day of the regular October term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,	} No. 2,597.
vs.	
J. G. ENGLISH, J. C. ENGLISH, ———	
JACKSON, and JOHN T. TINKHAM.	} December 13, 1901.

**Waiver of Jury and Submission of Cause.**

Now, at this day, comes the plaintiff herein by Mr. John H. Hall, United States Attorney, and the defendants above named by J. L. Rand and Mr. Lionel R. Webster, of

counsel, and this being the day set for the trial of this cause, now the parties hereto in open Court do stipulate and agree to try this cause before the Court, without the intervention of a jury, and the Court having heard the evidence adduced and the arguments of counsel, will advise thereof.

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And afterwards, to wit, on Thursday, the 4th day of April, 1901, the same being the 157th judicial day of the regular October term of said court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,	Complainant,	} No. 2,597.
vs.		
J. G. ENGLISH, J. C. ENGLISH, ———	} April 4, 1901.	
JACKSON, and JOHN T. TINKHAM.		
	Defendants,	

**Judgment.**

This cause having come regularly on for trial before the Court without the intervention of a jury, the parties having stipulated to that mode of trial, plaintiff appearing by Mr. John H. Hall, United States Attorney, and defendants appearing by Mr. John L. Rand and Mr. Lionel R. Webster, of counsel, and, after hearing the evidence ad-

duced and arguments of counsel, the Court took the same under advisement, and, now, at this time, the Court being fully advised.

It is ordered, adjudged, and decreed, that plaintiff have and recover of and from said defendants, J. G. English and J. C. English, and each of them, the sum of eight hundred and forty-two dollars (\$842) and its costs and disbursements of this action, and that execution issue therefor.

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And afterwards, to wit, on the 4th day of April, 1901, there was duly filed in said court, an opinion, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

UNITED STATES,	}
vs	
J. G. ENGLISH, et al.	

### Opinion.

John H. Hall, U. S. District Attorney, for the Government.

John L. Rand and Lionel R. Webster, for the Defendants.

BELLINGER, J.—This is an action by the United States to recover the value of 1684 cords of wood alleged to have been unlawfully cut upon the public domain. The

wood was used by the defendants in their quartz mill, at what is known as the Golconda Mill, in Eastern Oregon.

Two defenses are made: First, that the wood was cut from some placer mining claims owned by the defendants in the vicinity of their mill, preparatory to the working of such claims; and,

Second, that the defendants have a right to take from the public domain wood necessary in the conduct of their milling business.

As to the first of these defenses, I am satisfied that the defendants are not the owners in good faith of the alleged placer claims, and that the title so asserted is a mere pretense to justify taking the timber from the land claimed as placer mining ground.

By the act of June 3, 1878, which is entitled "An Act authorizing the citizens of Colorado, Nevada, and the territories to fell and remove timber on the public domain for mining and domestic purposes," it is provided: "That all citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, territories, or districts of which such citizens or persons may be at the time bona

fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes; provided, the provisions of this act shall not extend to railroad corporations."

Upon the argument, it was claimed that the defendants were entitled, under this act, to cut the timber in question. But this does not in terms apply to the State of Oregon; and it has been held that the phrase "other mineral districts of the United States" is not intended to include the State of Oregon, there being no such mineral district. *United States vs. Smith*, 11 Fed. 487; *United States vs. Benjamin*, 21 Fed. 285.

The question of defendants' liability, therefore, depends upon the construction to be given to another act of Congress, approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory."

Section 4 of this act is as follows: "That after the passage of this act it shall be unlawful to cut, or cause or procure to be cut or wantonly destroyed, any timber growing on any lands of the United States, in said States and territory, or remove, or cause to be removed, any timber from said public lands, with intent to export or dispose of the same; and no owner, master, or consignee of any vessel, or owner, director, or agent of any railroad, shall knowingly transport the same, or any lumber manufactured therefrom; and any person violating the provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined for every such offense a sum not less

than one hundred nor more than one thousand dollars; provided, that nothing herein contained shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or preparing his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; and the penalties herein provided shall not take effect until ninety days after the passage of this act."

It is contended for the defendants that this is a case of the taking of timber from the public domain necessary to support their improvements, and that it is within the proviso of the section just quoted. The Land Department by its instructions interprets the proviso in this act to authorize the taking of timber, not only from the mines and farms of the agriculturist and miner, but, when the required quantity is not obtainable therefrom, from other public lands near by.

It is clear, I think, that taking timber from public lands for the use the defendants made of this wood is not to support improvements within the meaning of the proviso of section 4 of the act of 1878. The use that is here made of this timber is for the conduct of a permanent business. The use is not an improvement.

In the case of the United States vs. Hacker, 73 Fed. Rep. 292, it is held that an indictment under this section which does not allege that the defendant intended to export or dispose of the timber cut upon public land, is fatally defective. The Court was of the opinion in that case, that the phrase "with intent to export or dispose of the same" has reference, not only to the removal of the timber, but

to the cutting of it, and it seems to follow from this ruling, that the cutting or procuring to be cut of timber, or its removal, is not a crime unless what is done is with the intent to export or dispose of the same. And it is argued in defendants' behalf from this, that these defendants are authorized to cut timber, or procure it to be cut, from the adjacent public lands, for use in their quartz-mill.

It would seem from the construction that has been given to this statute, that the act of the defendants is within neither the proviso which authorizes the taking of timber, nor the prohibition of the section, which makes the taking a crime. In other words, the timber in this case was not cut for export or sale, nor was it taken by the miner for the necessary support of his improvements.

Nevertheless, I am of the opinion that this section must be given such a construction as will prohibit the taking of timber from the adjacent public lands by a miner or agriculturist in any case not within the proviso in this section; that the statute is intended to preserve the timber upon the public domain against the cutting or taking for any purpose other than that of clearing the land of the agriculturist, or in the ordinary working of the mining claim of the miner, or for the purpose of supporting the necessary improvements of each; and this is not such a case.

The testimony in the case shows that the value of the wood in the tree was 50 cents per cord. When cut it was worth on the ground \$1.50 per cord, and at the mill \$3.00. I am of the opinion that the acts of the defendants were not willful. They cut and hauled this wood away in the belief that, under the law, they had a right so to do.



The provision in section 4 of the act of 1878 by which the unlawfulness of timber cutting is made to depend upon an intention to export and dispose of the same, leaves it fairly open to question, notwithstanding the provisos which follow, whether timber may not be cut for use at a quartz-mill located on lands adjacent to those from which the timber is cut. The precise question has never before been decided, so far as I am advised; and in the absence of a decision adverse to such a claim, I am not disposed to hold the conduct of the defendants "willful" in cutting the timber in question. The total amount cut is 1684 cords, for which the defendants should be charged at the rate of 50 cents per cord.

Filed April 4, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

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And afterwards, to wit, on the 18th day of April, 1901, there was duly filed in said court, a cost bill, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,	}	No. 2,597. 18th April, 1901.
vs.		
J. G. & J. T. ENGLISH.		

**Cost Bill.**

Statement of disbursements claimed by the plaintiff in the above-entitled cause, viz:

Clerk's fees .....	\$ 24.80
Marshal's fees .....	103.46
Costs in State Circuit Court.....	
Attorneys' fee.....	20.00
Attorney's fee for taking —— depositions, at \$2.50 each. ....	
Depositions. ....	
Examiner's fees. ....	
Referee's fees. ....	
Witness' fees: Jos. H. Kauffman, 1 day, 1.50; 24 miles at 15c. and 780 at 5c.....	44.10
Emett Brook, 1 day, 1.50; 10 miles at 15c, 1.50; 780 miles at 5c. ....	42.00
Expense of E. W. Dixon, Special Agent as witness	15.15
Edward Oliver, 1 day.....	1.50
Hiram Griffin, 1 day .....	1.50
	<hr/>
Total taxed at.....	252.45

J. A. SLADEN,  
Clerk.

District of Oregon—ss.

I, John H. Hall, being duly sworn, on my oath say that I am one of the attorneys for the plaintiff in the above-entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit; and that said plaintiff is entitled to recover the same from the defendants, as I verily believe.

JOHN H. HALL.

Subscribed and sworn to before me this 18th April, 1901.

J. A. SLADEN,  
Clerk.

By G. H. Marsh,  
Deputy Clerk.

Filed April 18, 1901. J. A. Sladen, Clerk, United States  
Circuit Court, District of Oregon.

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And afterwards, to wit, on the 4th day of October, 1901,  
there was duly filed in said court a petition for writ  
of error, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District  
of Oregon.*

THE UNITED STATES,

vs.

J. G. ENGLISH, J. C. ENGLISH, et al. }

**Petition for Writ of Error.**

To the Honorable Judges of the Circuit Court of the  
United States, for the District of Oregon.

Your petitioners herein, J. G. English and J. C. English,  
defendants in the above-entitled cause, bring their petition  
for a writ of error to the Circuit Court of the United  
States for the District of Oregon, and thereupon your  
petitioners show that on the 4th day of April, 1901, there  
was rendered and entered in the Circuit Court of the  
United States for the District of Oregon, a judgment  
against your petitioner and in favor of the plaintiff, for

the sum of eight hundred and forty-two dollars (\$842) and for its costs and disbursements of this action, which said judgment was rendered in an action theretofore begun and then pending therein, and upon a trial of said action, by the Court without the intervention of a jury, and your petitioners show that they are advised by counsel that there was manifest error in the record and proceedings had in said cause and in the rendition of said judgment, to the great injury and damage of your petitioners, all of which error will be more fully made to appear by an examination of the said record and in the assignment of errors thereon, hereinafter set forth. And to the end therefore, that the said judgment and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioners now pray that a writ of error may be issued therefrom, directed to the said Circuit Court of the United States for the District of Oregon, returnable according to law and the practice of the Court, and that there may be directed to be returned pursuant thereto a copy of the record, assignments of error and all proceedings had in the said cause in which the judgment was rendered against your petitioners; that the same may be reviewed in the United States Circuit Court of Appeals for the Ninth Circuit to the end that the error, if any has happened, may be duly corrected and full and speedy justice done your petitioners; and your petitioners now make the assignment of error attached hereto, on which they will rely, and which will be made to appear by return of said record in obedience to said writ.

Wherefore your petitioners pray the issuance of a writ as hereinbefore prayed and pray that the assignments of error annexed hereto may be considered as their assignments of error upon the writ, and that the judgment rendered in this cause may be reversed and held for naught and that said cause be remanded for further proceedings.

J. G. ENGLISH, and

J. C. ENGLISH.

Petitioners.

JOHN L. RAND,

LIONEL R. WEBSTER,

Attorneys for Petitioners.

Filed October 4, 1901. J. A. Saden, Clerk, United States Circuit Court, District of Oregon.

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And afterwards, to wit, on the 4th day of October, 1901, there was duly filed in said court an assignment of errors, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,

vs.

J. G. and J. C. ENGLISH, et al.

}  
}  
}

**Assignment of Errors.**

The defendants, J. G. English and J. C. English, in the above-entitled action and plaintiffs in error having peti-

tioned for an order from said Court permitting them to procure a writ of review to the Court directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment made and entered in the said cause against said defendants and petitioners herein, and in favor of the plaintiff above named, now makes and files with their petition the following specifications as their assignments of error herein, upon which they will rely for the reversal of said judgment upon the said writ and say; that in the record and proceedings in the above-entitled cause, upon a hearing and determination thereof in the Circuit Court of the United States for the District of Oregon, there is manifest error in this, to wit:

First.

That the Court erred in rendering judgment in favor of the plaintiff and against these defendants, because the complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them.

Second.

That the Court erred in holding the defendants liable in this action and in rendering judgment against them and in favor of the plaintiff, for the reason that upon the undisputed facts as established by the pleadings, the defendants are entitled to recover.

Third.

The Court erred in rendering judgment in favor of the plaintiff and against the defendants for the reason that, under the issues in this case, no evidence was, or could have been, admitted establishing any liability on the part of these defendants or either of them.

Fourth.

The Court erred in holding that under the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory," the defendants are liable notwithstanding the fact (which is established by the issues) that they cut the wood, for which they are sued in this action, for their own use and not with intent to export or dispose of the same, and that they did actually use it themselves within the State of Oregon.

Fifth.

The Court erred in its construction of section 4 of the act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory," as shown by its written opinion in this case and upon which the judgment herein was rendered, in this, that the Court herein holds and declares that the defendants are liable in this action notwithstanding the undisputed fact (established by the issues in this case) that the defendants cut the wood, for the value of which they are sued in this action, for their own use and not with the intent to export or dispose of the same and that they actually used the wood themselves within the State of Oregon.

JOHN L. RAND and

LIONEL R. WEBSTER.

Attorneys for Petitioners.

Filed October 4, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 4th day of October, 1901, there was duly filed in said court a bond on writ of error, in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,	} Plaintiff,
vs.	
J. G. ENGLISH, J. T. ENGLISH, W. H. JACKSON and JOHN T. TINKHAM,	} Defendants.

**Bond on Writ of Error.**

Know all men by these presents, that we, J. G. English, J. T. English, W. H. Jackson and John T. Tinkham, as principals, and A. J. Trimble and Frank S. Baillie, as sureties, are held and firmly bound unto The United States of America in the sum of five hundred dollars, to be paid to the said United States or to any of its proper officers, executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Scaled with our seals, and dated October 2d, 1901.

Whereas the above-named defendants J. G. English, J. T. English, W. H. Jackson, and John T. Tinkham are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment



in the above-entitled cause by the Circuit Court of the United States for the District of Oregon.

Now, therefor, the condition of this obligation is such, that if the above-named J. G. English, J. T. English, W. H. Jackson and John T. Tinkham shall prosecute said appeal to effect, and answer all costs upon appeal if he shall fail to make good his plea; then this obligation shall be void; otherwise to remain in full force and virtue.

J. G. ENGLISH.

J. T. ENGLISH.

W. H. JACKSON.

JOHN T. TINKHAM.

By JOHN L. RAND,

Their Attorney.

A. J. TRIMBLE. [L. S.]

FRANK S. BAILLIE. [L. S.]

Signed, sealed and delivered in presence of:

JOHN L. RAND.

DORA B. COOLEY.

United States of America, }  
District of Oregon. } ss.

I, A. J. Trimble, being duly sworn, depose and say that I am one of the sureties in the foregoing bond, that I am a resident and householder within said District, and that I am worth, in property situated therein, the sum of five thousand dollars, over and above all my just debts and liabilities, exclusive of property exempt from execution.

A. J. TRIMBLE.

Subscribed and sworn to before me this 3d day of October, 1901.

[Notarial Seal]

JOHN L. RAND,  
Notary Public for Oregon.

United States of America, }  
District of Oregon. } ss.

I, Frank S. Baillie, being duly sworn, depose and say that I am one of the sureties in the foregoing bond, that I am a resident and householder within said District, and that I am worth, in property situated therein, the sum of five thousand dollars, over and above all my just debts and liabilities, exclusive of property exempt from execution.

FRANK S. BAILLIE.

Subscribed and sworn to before me this October 3, 1901.

[Seal]

JOHN L. RAND,  
Notary Public for Oregon.

Filed October 4, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 4th day of October, 1901, there was filed in said court, an order allowing appeal in words and figures as follows, to wit:

*In the Circuit Court of the United States for the District of Oregon.*

THE UNITED STATES,	} Plaintiff,	No. 2,597.
vs.		
J. G. ENGLISH, J. C. ENGLISH, et al.,	} Defendants.	1901.

**Order Allowing Writ of Error.**

Now, at this time, come the defendants in the above-entitled case, J. G. English and J. C. English, by John L. Rand and Lionel R. Webster, their attorneys, and present to the Court their petition, praying for the allowance of a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit, and presents also the bond of said defendants for costs on said writ of error with sureties in the sum of five hundred dollars.

Whereupon, it is ordered, that the prayer of said petition be, and hereby is, granted, and that the clerk of this Court be, and hereby is, directed to issue the writ prayed for in said petition, and that said bond be, and the same hereby is, approved.

WM. B. GILBERT,  
Judge.

Filed October 4, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

**Clerk's Certificate to Transcript.**

United States of America, }  
 District of Oregon. } ss.

I, J. A. Sladen, Clerk of the Circuit Court of the United States, for the District of Oregon, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the foregoing pages, numbered from 3 to 54, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause of the United States, Plaintiff and Defendant in Error, vs. J. G. English and J. C. English, Defendants, and Plaintiffs in Error, as the same appears of record and on file in my office.

And I further certify that the cost of the foregoing transcript is twenty-seven and 10-100 dollars, and that the same has been paid by said plaintiffs in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this 28th day of October, A. D. 1901.

[Seal] J. A. SLADEN,  
 Clerk, United States Circuit Court for the District of  
 Oregon.

[Endorsed]: No. 778. In the United States Circuit Court of Appeals for the Ninth Circuit. J. G. English and J. C. English, Plaintiffs in Error, vs. The United States, Defendant in Error. Transcript of Record. In Error to the Circuit Court of the United States for the District of Oregon.

Filed December 4, 1901.

F. D. MONCKTON,  
Clerk.

